IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.332 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT INSECTICIDES LTD. - Appellant(s)
Versus
ASSTT. COMMISSIONER OF INCOME TAX - Opponent(s)

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Appearance :
MR JP SHAH for Appellant(s) : 1,
MR KM PARIKH for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 27/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. Heard Mr.J.P.Shah, learned advocate for the appellant and Mr.K.M.Parikh, learned Standing Counsel for the respondent.

2. ADMIT.

3. The following substantial question of law arises for determination:

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in upholding taxation of interest of Rs.39,51,840/- on the basis of the refusal of the Assessing Officer to accept the change in method of accounting from mercantile to cash ?"

4. The Assessment Year is 1994-95 and the relevant accounting period is year ended on 31st March, 1994. The Assessing Officer referred to Note No.1(b) of Schedule 19 of the annual accounts and tax audit report to hold that the change in method of accounting interest recovered on delayed payment from the customers was not acceptable and accordingly income to the extent of Rs.39,51,840/- had been understated. He made addition of the said sum and while doing so held that the change in method of accounting requires permission of the IT authorities.

5. The assessee carried the matter before the

Commissioner (Appeals), who allowed the appeal on this count. While doing so he took note of the fact that the changed method of accounting of recording interest on cash basis in relation to interest on delayed payment made by customers had been consistently followed by the assessee for the Assessment Year in question and subsequent Assessment Years. He also took note of the fact that out of the total amount of addition made by the Assessing Officer, interest income to the tune of Rs.25,80,947/- and Rs.7,41,747/- had been duly shown by the assessee as its income for Assessment Years 1995-96 and 1996-97 respectively. That the said income had been taxed on receipt basis in the said two Assessment Years. The Commissioner (Appeals), therefore, concluded that the change in method of accounting interest from mercantile basis to cash basis was bonafide, and while doing so he followed the principles laid down by this Court in the case of Commissioner of Income-tax Vs. Ganga Charity Trust Fund, [1986]

162 ITR 612 (Guj.).

6. The revenue carried the matter in appeal before the Tribunal. The findings recorded by the Tribunal are as under:

> “2.4 We have considered the rival submission of both the parties, looking to the facts and circumstances of the case, we find that assessee has changed the accounting method from mercantile to cash basis for the income of interest. The CIT(A) has deleted the addition relying upon the decision of Hon'ble Karnatake High Court. But we find that in that case, the assessee was financing company who changed the accounting method from mercantile to cash system for interest income while in the instant case, the assessee company followed mercantile system for the purpose but changed on cash basis for interest income. The Hon'ble Gujarat High Court has deleted this issue in CIT Vs. Ganga Charitable Trust 260 ITR 612, in which charitable trust was having the interest income in which they have changed the system from mercantile to cash system. The assessee has shown the case in respect of trust who changed the accounting system but the assessee was not able to show any decision that the company can change the system of accounting only for interest income. Therefore, we are of the view that CIT (A) is not justified in his action and we reverse the finding of CIT (A).”

7. It is apparent that the Tribunal while passing

the impugned order dated 27th August, 2004 has not only mixed up the facts of the case before it but also lost sight of the facts recorded by the Commissioner (Appeals). In the first instance, the impugned order of the Tribunal refers to some judgment of Karnataka High Court which does not find any place in the order of the Commissioner (Appeals). In the second instance, the decision of this Court has been brushed aside by saying that the said decision pertains to a case of a charitable trust and the assessee had not shown any decision which would permit a company to change the system of accounting.

8. The two reasons advanced by the Tribunal for overturning the order of the Commissioner (Appeals) are, to say the least, not germane to the issue. The Tribunal could not have referred to some decision of Karnataka High Court, which has never been cited or relied upon by the Commissioner (Appeals), nor is the citation

available in the impugned order of the Tribunal. The second reason advanced goes to show that the Tribunal has lost sight of the basic requirement of law, viz. a decision operates as a precedent for the law it lays down viz. the ratio of the decision; which is required to be understood and applied to the facts of the case at hand.

9. The Tribunal has singularly failed to deal with the findings recorded by the Commissioner (Appeals) regarding the amount having been taxed in subsequent years on the basis of cash system of accounting and thus the change in method being bonafide. These are findings of fact recorded by the Commissioner (Appeals). It was incumbent upon the Tribunal to deal with the same and the Tribunal could not have ignored the said findings of fact which appear on record. In fact, as can be seen from the submissions made on behalf of the appellant before the Commissioner (Appeals), the said details, viz. the amount having borne tax in subsequent years

had been placed before the Assessing Officer and the Assessing Officer has also conveniently ignored the same.

10. In these circumstances, the impugned order of the Tribunal suffers from total non-application of mind and cannot be sustained on this count. Accordingly, the question is answered in the negative i.e. in favour of the assessee and against the Revenue. The Tribunal could not have confirmed the taxation of the interest income on accrual basis without recording reasons for disagreeing with the reasoned order made by the Commissioner (Appeals).

11. In the result, the appeal is allowed. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**